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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

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9 JOHN TURNER,

10 Plaintiff,

11 v.

12 LAS VEGAS METROPOLITAN POLICE  
13 DEPARTMENT, *et al.*,

14 Defendants.

Case No. 2:16-cv-02413-RFB-VCF

**ORDER**

15 Before the Court are Plaintiff's Motion for Reconsideration (ECF No. 82), Motion to Strike  
16 (ECF No. 83), Motion for Order to Show Cause (ECF No. 84), Motion for Relief (ECF No. 85),  
17 Motion for Partial Summary Judgment (ECF No. 95), and Motion for Preliminary Injunction (ECF  
18 No. 98).

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20 **I. PROCEDURAL BACKGROUND**

21 Plaintiff filed the complaint on October 14, 2016. ECF No. 1. On January 26, 2017, the  
22 Court screened Plaintiff's complaint and provided Plaintiff an opportunity to cure several  
23 deficiencies. ECF Nos. 2, 3. The Court has screened and dismissed three further iterations of  
24 Plaintiff's complaint. ECF Nos. 20, 90, 99. Plaintiff has been granted leave to file a seventh  
25 amended complaint by January 11, 2019. ECF No. 99.

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27 **II. FACTS ALLEGED**

28 The Court summarizes the facts alleged in Plaintiff's Motion for Preliminary Injunction.

1 Plaintiff is an inmate in the custody of the Nevada Department of Corrections. Plaintiff sought to  
2 send his Sixth Amended Complaint to this Court in a sealed envelope. A correctional officer  
3 required Plaintiff to open the envelope for an inspection of its contents, even though the envelope  
4 was addressed to the Clerk of Court.

5 Plaintiff alleges that this inspection of his legal mail constitutes retaliation for his exercise  
6 of his right to petition the courts and seeks a preliminary injunction enjoining Defendants from  
7 inspecting his outgoing legal mail.

### 8 9 **III. LEGAL STANDARD**

10 A preliminary injunction is “an extraordinary remedy that may only be awarded upon a  
11 clear showing that the plaintiff is entitled to such relief.” Winter v. Natural Res. Def. Council,  
12 Inc., 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, a plaintiff must establish four  
13 elements: “(1) a likelihood of success on the merits, (2) that the plaintiff will likely suffer  
14 irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in its  
15 favor, and (4) that the public interest favors an injunction.” Wells Fargo & Co. v. ABD Ins. & Fin.  
16 Servs., Inc., 758 F.3d 1069, 1071 (9th Cir. 2014), as amended (Mar. 11, 2014) (citing Winter, 555  
17 U.S. 7, 20 (2008)). A preliminary injunction may also issue under the “serious questions” test.  
18 Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1134 (9th Cir. 2011) (affirming the  
19 continued viability of this doctrine post-Winter). According to this test, a plaintiff can obtain a  
20 preliminary injunction by demonstrating “that serious questions going to the merits were raised  
21 and the balance of hardships tips sharply in the plaintiff’s favor,” in addition to the other Winter  
22 elements. Id. at 1134-35 (citation omitted).

### 23 24 **IV. DISCUSSION**

25 While prison inmates retain their First Amendment right to send and receive mail, the Ninth  
26 Circuit has held that a prison’s policy of performing a cursory visual inspection of outgoing mail  
27 is constitutionally permissible. Witherow v. Paff, 52 F.3d 264, 265–66 (9th Cir. 1995) (per  
28 curiam). Constitutional concerns may arise where officers read a prisoner’s legal mail or open a

1 prisoner's legal mail outside the presence of the prisoner. See Nordstrom v. Ryan, 762 F.3d 903,  
2 909 (9th Cir. 2014). But it is appropriate for an officer to examine outgoing legal mail "to confirm  
3 that it does not include suspicious features such as maps" or to "mak[e] sure that illegal goods or  
4 items that pose a security threat are not hidden in the envelope." Nordstrom v. Ryan, 856 F.3d  
5 1265, 1272 (9th Cir. 2017).

6 Plaintiff alleges that, pursuant to prison policy, a correctional officer instructed Plaintiff to  
7 open his sealed envelope so that the contents could be inspected in Plaintiff's presence. Plaintiff  
8 does not clearly and unambiguously state that the correctional officer read his legal mail. Instead,  
9 Plaintiff's filing suggests that the officer inspected Plaintiff's mail for security threats. Such  
10 inspections of mail, including legal mail, are constitutionally permissible. Therefore, Plaintiff has  
11 not established a likelihood of success on the merits. The Court need not address the other  
12 preliminary injunction elements.

#### 13 14 **V. CONCLUSION**

15 **IT IS THEREFORE ORDERED** that Plaintiff's Motion for Preliminary Injunction (ECF  
16 No. 98) is DENIED without prejudice.

17 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Partial Summary Judgment  
18 (ECF No. 95) is DENIED without prejudice as Plaintiff does not have an operative complaint.

19 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Strike (ECF No. 83) Defendants'  
20 Opposition (ECF No. 66) to the Motion for Preliminary Injunction (ECF No. 58) is DENIED as  
21 moot because the Court denied the underlying Motion for Preliminary Injunction on December 15,  
22 2017 (ECF No. 70).

23 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Order to Show Cause for a  
24 Preliminary Injunction (ECF No. 84) and Plaintiff's Pleading (ECF No. 85), which the Court  
25 construes as a Motion for Preliminary Injunction, are DENIED without prejudice because Plaintiff  
26 has not sufficiently established an imminent threat to his safety, as this Court explained on the  
27 record at the hearing held April 3, 2018 (ECF No. 70).

1           **IT IS FURTHER ORDERED** that the remaining pending motion in this case, Plaintiff's  
2 Motion for Reconsideration (ECF No. 82), is DENIED without prejudice as the case is currently  
3 STAYED (ECF No. 70).

4           DATED this 7th day of December, 2018.



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6           **RICHARD F. BOULWARE, II**  
7           **UNITED STATES DISTRICT JUDGE**